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Attorneys for Defendants
Cox Communications, Inc.; CoxCom, LLC; and
Cox Communications California, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENTROPIC COMMUNICATIONS,
LLC,

Plaintiff,

v.

COX COMMUNICATIONS, INC.;
COXCOM, LLC; and COX
COMMUNICATIONS CALIFORNIA,
LLC,

Defendants.

Case No. 2:23-cv-01049-JWH-KES

**COX COMMUNICATIONS, INC.,
COXCOM, LLC, AND COX
COMMUNICATIONS
CALIFORNIA, LLC'S NOTICE
OF AMENDED
COUNTERCLAIMS AND
OPPOSITION TO ENTROPIC'S
MOTION TO DISMISS**

DEMAND FOR JURY TRIAL

1 COX COMMUNICATIONS, INC.,
2 COXCOM, LLC, AND COX
3 COMMUNICATIONS CALIFORNIA,
4 LLC,

Counter-Claimants,

5 v.

6 ENTROPIC COMMUNICATIONS,
7 LLC; MAXLINEAR
8 COMMUNICATIONS LLC; AND
9 MAXLINEAR, INC.

Counter-Defendants.

1 Defendants and Counter-Claimants Cox Communications, Inc., CoxCom,
 2 LLC, and Cox Communications California, LLC (collectively “Cox”) oppose
 3 Plaintiff and Counter-Defendants Entropic Communications, LLC’s (“Entropic”) Motion to Dismiss Cox’s counterclaims under Fed. R. Civ. Pro. 12(b)(6). (Dkt. 163-
 4 1, the “Motion”). Cox opposes the grounds on which Entropic moved.

6 As detailed below, while there is no merit to Entropic’s Motion, Cox has
 7 elected to moot same by filing amended counterclaims that further address the issues
 8 Entropic raises as well as facts uncovered via further discovery. *See* Cox’s Answer
 9 and Defenses to Complaint and First Amended Counterclaims (“Amended
 10 Counterclaims”). Cox submits its Amended Counterclaims pursuant to Fed. R. Civ.
 11 Pro. 15(a)(1)(B), which states that a party may amend its pleading once as a matter of
 12 course, “if the pleading is one to which a responsive pleading is required” and the
 13 amendment is no later than “21 days after service of a motion under Rule 12(b), (e),
 14 or (f).” Cox’s counterclaim is a pleading to which a responsive pleading is required,
 15 Cox has not before amended its pleadings as of right before submitting this
 16 amendment, and Cox’s amendment is submitted within 21 days after service of the
 17 Motion. *See, e.g., Bauer Bros. LLC v. Nike, Inc.*, No. 09cv500–WQH–BGS, 2010 WL
 18 4569893, at *2 (N.D. Calif. Nov. 5, 2010) (“Nike filed its Amended Counterclaims,
 19 less than 21 days after Bauer filed the pending Motion to Strike and Dismiss” and
 20 “pursuant to Rule 15(a)(1), Nike was not required to seek leave of Court to file the
 21 Amended Counterclaims.”).

22 Cox demonstrates below that, while Cox’s existing pleadings suffice despite
 23 Entropic’s contrary arguments, the Amended Counterclaims that are based upon
 24 further discovery obtained in this action address, and moot, all the points Entropic
 25 raises.

26 ***Entropic’s Rule 12 Arguments:*** Contrary to Entropic’s assertions (ECF No.
 27 163-1, at 11-17), Cox’s existing counterclaims fully identified the contract,
 28 applicability of the contract, Cox’s status and performance as an intended third-party
 COX DEFENDANTS’ NOTICE OF AMENDED COUNTERCLAIMS AND OPPOSITION TO
 ENTROPIC’S MOTION TO DISMISS
 CASE NO. 2:23-CV-01049-JWH-KES

1 beneficiary, and Entropic's acts that induced breach or disruption of the contract and
2 caused damage and injury to Cox. (ECF No. 89, at ¶¶ 284-96, 299-303).

3 Entropic first urged that Cox fails to plead it is an intended beneficiary of the
4 DOCSIS License and therefore fails to plead a valid contract for its counterclaim of
5 tortious interference. (ECF No. 163-1, at 10-11). This is incorrect, as Cox's original
6 counterclaims pled sufficient facts identifying Cox's status as an intended third-party
7 beneficiary to the DOCSIS License Agreement. (*E.g.*, ECF No. 89, at ¶¶ 287-90).
8 Further, Entropic incorrectly asserts that Cox fails to allege it is an intended
9 beneficiary based on provisions in the DOCSIS License Agreement that are
10 inapplicable to Cox. (ECF No. 163-1, at 11). Nonetheless, the Amended
11 Counterclaims at ¶¶ 287, 294-98, 302-03, 310-18 further detail facts concerning the
12 above points and establishing relevant injuries, including additional facts revealed
13 following discovery.

14 Entropic then incorrectly asserted Cox's counterclaims are not viable because
15 they do not affirmatively allege any asserted patent is essential to practice the
16 DOCSIS specifications. (ECF No. 163-2, at 11-13). Cox disagrees, particularly given
17 the averments Plaintiff set forth in the Complaint, which Cox points to in the original
18 counterclaims. (ECF No. 89, at ¶¶ 299-300). Cox nonetheless amended its pleading
19 to further address this point and provide further averments concerning these points
20 and related breaches. (Amended Counterclaims, at ¶¶ 306-07). Entropic's viability
21 argument is accordingly both incorrect and moot.

22 Entropic next claimed that Cox failed to show a legally cognizable harm. (ECF
23 No. 163-1, at 13-14). Cox's counterclaims already plausibly demonstrated that
24 Entropic's inducement of MaxLinear's breaches created a void assignment and
25 deprived Cox of the benefits of the DOCSIS License Agreement and caused it to incur
26 the expense of defending this case that would not otherwise have been brought. (ECF
27 No. 89, at ¶¶ 286-290, 291, 294-296, 307-308, 311-13). Nonetheless, the Amended
28

Counterclaims at ¶¶ 303, 310-318, 336-38 further detail facts establishing relevant injuries, including additional facts revealed following discovery.

Finally, Entropic incorrectly argued that Cox's counterclaims do not allege acts by Entropic sufficient to plausibly claim Entropic induced MaxLinear to breach the DOCSIS License Agreement. (ECF No. 163-2, at 15-17). Cox's original counterclaims included averments plausibly demonstrating Entropic's awareness of the DOCSIS License Agreement and MaxLinear's obligations thereunder and induced MaxLinear to breach those obligations through its assignment of the Asserted Patents. (*E.g.*, ECF No. 89, ¶¶ 286-290, 291, 294-296, 307-308, 311-13). Based upon additional discovery, however, Cox's Amended Counterclaims, including in ¶ 296-98, 302-03, 310-318, further supplement these aspects of its claims and identify additional bases for concluding that Entropic improperly induced MaxLinear to breach the DOCSIS License Agreement.

Accordingly, the Amended Counterclaims both fully address and moot Entropic's positions on the adequacy of Cox's tortious interference claim.

* * *

The Motion is without merit. Independently, it is moot as a matter of law because the Amended Counterclaims are the only operative pleading. *See Ramirez v. County of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) ("Plaintiff's Second Amended Complaint superseded the First Amended Complaint, and the First Amended Complaint ceased to exist. Because the Defendants' motion to dismiss targeted the Plaintiff's First Amended Complaint, which was no longer in effect, we conclude that the motion to dismiss should have been deemed moot"); *Phillips v. County of Riverside*, No. 5:20-cv-01266, 2023 WL 4290379, at *1 (C.D. Cal. May 12, 2023) ("Because Defendants' Motion to Dismiss targeted Plaintiff's SAC, which is no longer in effect, Defendants' Motion to Dismiss is moot"); *Bauer*, 2010 WL 4569893, at *2 (denying motion to dismiss amended counterclaims because "[o]nce

1 filed, an amended pleading supersedes the original pleading in its entirety.”) (citation
2 omitted).

3 Finally, even if Cox did not have the option to exercise its amendment as of
4 right, the amendments Cox has made are appropriate and allowable under controlling
5 authority. Rule 15(a)(2) states that “[t]he court should freely give leave [to amend]
6 when justice so requires.” There is a strong public policy in favor of permitting
7 amendment, and the Ninth Circuit has made clear that “Rule 15’s policy of favoring
8 amendments to pleadings should be applied with ‘extreme liberality.’” *Bowles v.*
9 *Reade*, 198 F.3d 752, 757 (9th Cir. 1999). The Court has already found that Cox had
10 good cause and acted with diligence in presenting its original motion to amend, and
11 that justice required adding Cox’s counterclaims. (ECF No. 86, at 3). Entropic says
12 nothing to undercut those findings and, accordingly, there is no justification for its
13 request to preclude any amendment.

14 Accordingly, Cox requests the Court deny the Motion.

15 Dated: January 9, 2024

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